

REMARKS/ARGUMENTS

The foregoing amendments and these remarks are responsive to the final Office Action mailed September 24, 2007. A Petition for Extension of Time, along with authorization to charge the fees for a three month extension of time, as well as any underpayment in fees, accompanies this Amendment. Applicant submits that Applicant's pending claims are patentable over the references of record, and requests reconsideration and allowance.

In the Office Action, Claims 26-38 were allowed. Claim 39 was rejected under 35 U.S.C. 102 (e) as being anticipated by Drewry et al U.S. Publication 2003/0083657 ("Drewry"). Applicant appreciates the recognition of patentable subject matter in Claims 26-38. In this response, Applicant amends Claim 39 and requests reconsideration of the rejection of Claim 39.

Claim 39 was also rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 20-21 and 26-27 of copending application No. 10/704,868, and over claim 1 of U.S. Patent No. 7,083,622. Applicant submits a terminal disclaimer which is submitted to overcome the stated rejection.

Claim 39 is directed to a new, previously undiscovered method of repairing the facet joints, one of dynamic stabilization. In the method of the invention, a longitudinally rigid spinal implant support structure such as a rod and two connector assemblies are used. A first connector assembly is positioned and secured in the area of the superior articular facet of a lower vertebrae, and the other connector assembly or the fixation connector assembly is positioned and secured in the area of an inferior articular facet of an adjacent upper vertebrae. The longitudinally rigid support structure is then secured to the connector assemblies so as to permit post-operative {WP458874;1}

longitudinal (substantially in the direction of the long length of the elongated support) movement relative to at least one of the connector assemblies. Longitudinal movement of the support structure relative to at least one of the connector assemblies permits longitudinal movement of one connector assembly relative to the other. However, lateral movement (relative to the support structure) of one connector assembly relative to another is substantially prevented. This relative movement and the support of the longitudinally rigid support structure together provide the dynamic stabilization of the invention.

Applicant submits that Drewry does not disclose the invention, in that Drewry does not and can not provide the dynamic stabilization that is afforded by the present invention. Drewry discloses only an elastic support member that is fixed in position between connectors:

**It is further contemplated that elongate member 80 has elasticity such that when tensioned it will tend to return toward its pre-tensioned state. (Drewry, Para [0041])**

The elastic member 80 is fixed in place at each connector by various structure that is provided for this purpose:

**Penetrating element 54 includes a distal end 62 tapered to facilitate penetration of penetrating element 54 into elongate member 80. (Drewry, Para [0046])**

Drewry in fact teaches away from the dynamic stabilization of the invention:

**Anchor 130 further includes an elongate member engaging portion in the form of a penetrating element 142 extending from bearing surface 140 into passage 138. Elongate member 80 can be placed into passage 138 and pressed against bearing surface 140 such that penetrating element 142 extends through elongate member 80. Penetrating element 142 provides a bearing member against which elongate member 80 acts to resist tensile or compressive longitudinal forces that would tend to cause elongate member 80 to slip in anchor 130.** (Drewry, Par. [0051])

Drewry relies on longitudinal elasticity of the elongate member 80 in order to permit movement of the anchors relative to one another. However, as the elongate member 80 is elastic it will not and cannot provide the kind of stabilization that is afforded by the invention. The invention while permitting longitudinal movement of the rigid support structure relative to a connector assembly in the longitudinal direction, cannot move laterally relative to either connector. Further, since the support structure is itself longitudinally rigid (eg, substantially inelastic in the longitudinal direction), the invention will not have the elastic forces operating on the patient to create an unnatural movement. The invention will prevent the first connector assembly from moving laterally relative to the second connector assembly, something the elastic elongate member 80 will not do, and since each connector assembly is fixed to a vertebrae, the invention will prevent the vertebrae from moving laterally relative to one another. To the extent some small lateral flexing of the support structure might occur, the action of same is to return the {WP458874;1}

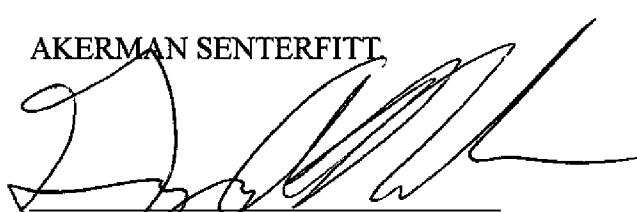
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vertebrae to the correct aligned position. The permitting of substantially longitudinal relative movement and preventing of substantial lateral movement provides a dynamic stabilization of the vertebrae that is not afford by Drewry.

The present invention provides a replacement joint with both strength and stability, and closely resembles the flexibility and range of motion of the natural facet joint. The invention is an effective solution to the problem of reconstructing and replacing the facet in a manner that permits the required stability and mobility of an effective prosthetic device. Drewry fails to provide dynamic stabilization of the kind afforded by the invention, and in fact fixes the elongate member to the anchors. Applicant accordingly requests reconsideration and allowance of Applicant's pending claims. The Examiner is cordially invited to call the undersigned if clarification is needed on any matter within this response, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

AKERMAN SENTERFITT



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